

HB 1848 - H AMD 305

By Representative Springer

ADOPTED 03/14/2005

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** APPLICABILITY. (1) Sections 2 through 10
4 of this chapter apply to any multiunit residential building for which
5 the permit for construction or rehabilitative construction of such
6 building was issued on or after the effective date of this act.

7 (2) Sections 2 and 11 through 18 of this act apply to any action
8 that alleges breach of an implied or express warranty under chapter
9 64.34 RCW or that seeks relief that could be awarded for such breach,
10 regardless of the legal theory pled, except that sections 11 through 18
11 of this act shall not apply to:

12 (a) Actions filed or served prior to the effective date of this
13 act;

14 (b) Actions for which a notice of claim was served pursuant to
15 chapter 64.50 RCW prior to the effective date of this act;

16 (c) Actions asserting any claim regarding a building that is not a
17 multiunit residential building;

18 (d) Actions asserting any claim regarding a multiunit residential
19 building that was permitted on or after the effective date of this act
20 unless the letter required by section 7 of this act has been submitted
21 to the appropriate building department or the requirements of section
22 10 of this act have been satisfied.

23 (3) Other than the requirements imposed by sections 2 through 10 of
24 this act, nothing in this chapter amends or modifies the provisions of
25 RCW 64.34.050.

26 NEW SECTION. **Sec. 2.** DEFINITIONS. Unless the context clearly
27 requires otherwise, the definitions in RCW 64.34.020 and in this
28 section apply throughout this chapter.

1 (1) "Attached dwelling units" means any dwelling unit that is
2 attached to another dwelling unit by a wall, floor, or ceiling that
3 separates heated living spaces. A garage is not a heated living space.

4 (2) "Building enclosure" means that part of any building, above or
5 below grade, that physically separates the outside or exterior
6 environment from interior environments and which weatherproofs,
7 waterproofs, or otherwise protects the building or its components from
8 water or moisture intrusion. Interior environments consist of both
9 heated and unheated enclosed spaces. The building enclosure includes,
10 but is not limited to, that portion of roofs, walls, balcony support
11 columns, decks, windows, doors, vents, and other penetrations through
12 exterior walls, which waterproof, weatherproof, or otherwise protect
13 the building or its components from water or moisture intrusion.

14 (3) "Building enclosure design documents" means plans, details, and
15 specifications for the building enclosure that have been stamped by a
16 licensed engineer or architect. The building enclosure design
17 documents shall include details and specifications that are appropriate
18 for the building in the professional judgment of the architect or
19 engineer which prepared the same to waterproof, weatherproof, and
20 otherwise protect the building or its components from water or moisture
21 intrusion, including details of flashing, intersections at roof, eaves
22 or parapets, means of drainage, water-resistive membrane, and details
23 around openings.

24 (4) "Developer" means:

25 (a) With respect to a condominium or a conversion condominium, the
26 declarant; and

27 (b) With respect to all other buildings, an individual, group of
28 individuals, partnership, corporation, association, municipal
29 corporation, state agency, or other entity or person that obtains a
30 building permit for the construction or rehabilitative reconstruction
31 of a multiunit residential building. If a permit is obtained by
32 service providers such as architects, contractors, and consultants who
33 obtain permits for others as part of services rendered for a fee, the
34 person for whom the permit is obtained shall be the developer, not the
35 service provider.

36 (5) "Dwelling unit" has the meaning given to that phrase or similar
37 phrases in the ordinances of the jurisdiction issuing the permit for

1 construction of the building enclosure but if such ordinances do not
2 provide a definition, then "dwelling unit" means a residence containing
3 living, cooking, sleeping, and sanitary facilities.

4 (6) "Multiunit residential building" means:

5 (a) A building containing more than two attached dwelling units,
6 including a building containing nonresidential units if the building
7 also contains more than two attached dwelling units, but excluding the
8 following classes of buildings:

9 (i) Hotels and motels;

10 (ii) Dormitories;

11 (iii) Care facilities;

12 (iv) Floating homes;

13 (v) A building that contains attached dwelling units that are each
14 located on a single platted lot, except as provided in (b) of this
15 subsection.

16 (vi) A building in which all of the dwelling units are held under
17 one ownership and is subject to a recorded irrevocable sale prohibition
18 covenant.

19 (b) If the developer submits to the appropriate building department
20 when applying for the building permit described in section 3 of this
21 act a statement that the developer elects to treat the improvement for
22 which a permit is sought as a multiunit residential building for all
23 purposes under this chapter, then "multiunit residential building" also
24 means the following buildings for which such election has been made:

25 (i) A building containing only two attached dwelling units;

26 (ii) A condominium that does not contain attached dwelling units;

27 and

28 (iii) Any building that contains attached dwelling units each of
29 which is located on a single platted lot.

30 (7) "Qualified building inspector" means a person satisfying the
31 requirements of section 5 of this act.

32 (8) "Rehabilitative construction" means construction work on the
33 building enclosure of a multiunit residential building if the cost of
34 such construction work is more than five percent of the assessed value
35 of the building.

36 (9) "Sale prohibition covenant" means a covenant that prohibits the
37 sale or other disposition of individual dwelling units as or as part of
38 a condominium for five years or more from the date of first occupancy

1 except as otherwise provided in section 10 of this act, and the
2 developer has submitted to the appropriate building department a
3 certified copy of the recorded covenant; provided such covenant shall
4 not apply to sales or dispositions listed in RCW 64.34.400(2). The
5 covenant must be recorded in the county in which the building is
6 located and must be in substantially the following form:

7 This covenant has been recorded in the real property records of
8 County, Washington, in satisfaction of the
9 requirements of sections 2 through 10 of this act. The
10 undersigned is the owner of the property described on Exhibit
11 A (the "Property"). Until termination of this covenant, no
12 dwelling unit in or on the Property may be sold as a
13 condominium unit except for sales listed in RCW 64.34.400(2).

14 This covenant terminates on the earlier of either: (a)
15 Compliance with the requirements of section 10 of this act, as
16 certified by the owner of the Property in a recorded supplement
17 hereto; or (b) the fifth anniversary of the date of first
18 occupancy of a dwelling unit as certified by the Owner in a
19 recorded supplement hereto.

20 All title insurance companies and persons acquiring an interest in the
21 Property may rely on the forgoing certifications without further
22 inquiry in issuing any policy of title insurance or in acquiring an
23 interest in the Property.

24 (10) "Stamped" means bearing the stamp and signature of the
25 responsible licensed architect or engineer on the title page and every
26 sheet of the documents, drawings, or specifications, including
27 modifications to the documents, drawings, and specifications that
28 become part of change orders or addenda to alter those documents,
29 drawings, or specifications.

30 NEW SECTION. **Sec. 3.** DESIGN DOCUMENTS. (1) Any person applying
31 for a building permit for construction or rehabilitative construction
32 of the building enclosure of a multiunit residential building shall
33 submit building enclosure design documents to the appropriate building
34 department prior to the start of construction or rehabilitative
35 construction. If construction work on a building enclosure is not
36 rehabilitative construction because the cost thereof is not more than

1 five percent of the assessed value of the building, then the person
2 applying for a building permit shall submit to the building department
3 a letter so certifying. Any changes to the building enclosure design
4 documents that alter the manner in which the building or its components
5 is waterproofed, weatherproofed, and otherwise protected from water or
6 moisture intrusion shall be stamped by the architect or engineer and
7 shall be provided to the building department and to the person
8 conducting the course of construction inspection in a timely manner to
9 permit such person to inspect for compliance therewith, and may be
10 provided through individual updates, cumulative updates, or as-built
11 updates.

12 (2) The building department shall not issue a building permit for
13 construction of the building enclosure of a multiunit residential
14 building or for rehabilitative construction unless the building
15 enclosure design documents contain a stamped statement by the person
16 stamping the building enclosure design documents in substantially the
17 following form: "The undersigned has provided building enclosure
18 documents that in my professional judgment are appropriate to satisfy
19 the requirements of sections 1 through 10 of this act."

20 (3) The building department is not charged with determining whether
21 the building enclosure design documents are adequate or appropriate to
22 satisfy the requirements of sections 1 through 10 of this act. Nothing
23 in sections 1 through 10 of this act requires a building department to
24 review, approve, or disapprove enclosure design documents.

25 NEW SECTION. **Sec. 4.** INSPECTIONS. All multiunit residential
26 buildings shall have the building enclosure inspected by a qualified
27 inspector during the course of initial construction and during all
28 rehabilitative construction.

29 NEW SECTION. **Sec. 5.** INSPECTORS--QUALIFICATIONS--INDEPENDENCE.

30 (1) A qualified building enclosure inspector:

31 (a) Must be either: (i) A licensed architect or engineer with
32 verifiable training and experience in building enclosure design and
33 construction; or (ii) any person with substantial and verifiable
34 training and experience in building enclosure design and construction;

35 (b) Shall be free from improper interference or influence relating
36 to the inspections; and

1 (c) May not be an employee, officer, or director of, nor have any
2 pecuniary interest in, the declarant, developer, association, or any
3 party providing services or materials for the project, or any of their
4 respective affiliates, except that the qualified inspector may be the
5 architect or engineer who approved the building enclosure design
6 documents or the architect or engineer of record. The qualified
7 inspector may, but is not required to, assist with the preparation of
8 such design documents.

9 (2) Nothing in this section alters requirements for licensure of
10 any architect, engineer, or other professional, or alters the
11 jurisdiction, authority, or scope of practice of architects, engineers,
12 other professionals, or general contractors.

13 NEW SECTION. **Sec. 6.** SCOPE OF INSPECTION. (1) Any inspection
14 required by this chapter shall include, at a minimum, the following:

15 (a) Water penetration resistance testing of a representative sample
16 of windows and window installations. Such tests shall be conducted
17 according to industry standards. Where appropriate, tests shall be
18 conducted with an induced air pressure difference across the window and
19 window installation. Additional testing is not required if the same
20 assembly has previously been tested in situ within the previous two
21 years in the project under construction by the builder, by another
22 member of the construction team such as an architect or engineer, or by
23 an independent testing laboratory; and

24 (b) An independent periodic review of the building enclosure during
25 the course of construction or rehabilitative construction to ascertain
26 whether the multiunit residential building has been constructed, or the
27 rehabilitative construction has been performed, in substantial
28 compliance with the building enclosure design documents.

29 (2) Subsection (1)(a) of this section shall not apply to
30 rehabilitative construction if the windows and adjacent cladding are
31 not altered in the rehabilitative construction.

32 (3) "Project" means one or more parcels of land in a single
33 ownership, which are under development pursuant to a single land use
34 approval or building permit, where window installation is performed by
35 the owner with its own forces, or by the same general contractor, or,
36 if the owner is contracting directly with trade contractors, is
37 performed by the same trade contractor.

1 NEW SECTION. **Sec. 7.** CERTIFICATION--CERTIFICATE OF OCCUPANCY.

2 Upon completion of an inspection required by this chapter, the
3 qualified inspector shall prepare and submit to the appropriate
4 building department a signed letter certifying that the building
5 enclosure has been inspected during the course of construction or
6 rehabilitative construction and that it has been constructed or
7 reconstructed in substantial compliance with the building enclosure
8 design documents, as updated pursuant to section 3 of this act. The
9 building department shall not issue a final certificate of occupancy or
10 other equivalent final acceptance until the letter required by this
11 section has been submitted. The building department is not charged
12 with and has no responsibility for determining whether the building
13 enclosure inspection is adequate or appropriate to satisfy the
14 requirements of this chapter.

15 NEW SECTION. **Sec. 8.** INSPECTOR, ARCHITECT, AND ENGINEER
16 LIABILITY. (1) Nothing in this act is intended to, or does:

17 (a) Create a private right of action against any inspector,
18 architect, or engineer based upon compliance or noncompliance with its
19 provisions; or

20 (b) Create any independent basis for liability against an
21 inspector, architect, or engineer.

22 (2) The qualified inspector, architect, or engineer and the
23 developer that retained the inspector, architect, or engineer may
24 contractually agree to the amount of their liability to the developer.

25 NEW SECTION. **Sec. 9.** NO EVIDENTIARY PRESUMPTION--ADMISSIBILITY.

26 A qualified inspector's report or testimony regarding an inspection
27 conducted pursuant to this chapter is not entitled to any evidentiary
28 presumption in any arbitration or court proceeding. Nothing in this
29 chapter restricts the admissibility of such a report or testimony, and
30 questions of the admissibility of such a report or testimony shall be
31 determined under the rules of evidence.

32 NEW SECTION. **Sec. 10.** NO SALE OF CONDOMINIUM UNIT ABSENT
33 COMPLIANCE. (1) Except for sales or other dispositions listed in RCW
34 64.34.400(2), no declarant may convey a condominium unit that may be

1 occupied for residential use in a multiunit residential building
2 without first complying with the requirements of sections 1 through 10
3 of this act unless:

4 (a) With respect to original building construction, the stamped
5 documents required by section 3 of this act and the letter required by
6 section 7 of this act have been submitted to the appropriate building
7 department; provided this subsection (1)(a) does not apply to
8 conversion condominiums; or

9 (b) The building enclosure of the building in which such unit is
10 included is inspected by a qualified building enclosure inspector, and:

11 (i) The inspection includes such intrusive or other testing, such
12 as the removal of siding or other building enclosure materials, that
13 the inspector believes, in his or her professional judgment, is
14 necessary to ascertain the manner in which the building enclosure was
15 constructed;

16 (ii) The inspection evaluates, to the extent reasonably
17 ascertainable and in the professional judgment of the inspector, the
18 present condition of the building enclosure including whether such
19 condition has adversely affected or will adversely affect the
20 performance of the building enclosure to waterproof, weatherproof, or
21 otherwise protect the building or its components from water or moisture
22 intrusion. "Adversely affect" has the same meaning as provided in RCW
23 64.34.445(7);

24 (iii) The inspection report includes recommendations for repairs to
25 the building envelope that, in the professional judgment of the
26 qualified building inspector, are necessary to: (A) Repair a design or
27 construction defect in the building envelope that results in the
28 failure of the building envelope to perform its intended function and
29 allows unintended water penetration not caused by flooding; and (B)
30 repair damage caused by such a defect that has an adverse effect as
31 provided in RCW 64.34.445(7);

32 (iv) With respect to a building that would be a multiunit
33 residential building but for the recording of a sale prohibition
34 covenant and unless more than five years have elapsed since the date
35 such covenant was recorded, all repairs to the building enclosure
36 recommended pursuant to (b)(iii) of this subsection have been made; and

37 (v) The declarant provides as part of the public offering

1 statement, consistent with RCW 64.34.410 (1)(nn) and (2), an inspection
2 and repair report signed by the qualified building enclosure inspector
3 that identifies:

4 (A) The extent of the inspection performed pursuant to this
5 section;

6 (B) The information obtained as a result of that inspection; and

7 (C) The manner in which any repairs required by this section were
8 performed, the scope of those repairs, and the names of the persons
9 performing those repairs.

10 (2) Failure to deliver the inspection and repair report in
11 violation of this section constitutes a failure to deliver a public
12 offering statement for purposes of chapter 64.34 RCW.

13 NEW SECTION. **Sec. 11.** ARBITRATION--ELECTION--NUMBER OF
14 ARBITRATORS--QUALIFICATIONS--TRIAL DE NOVO. (1) If the declarant, an
15 association, or a unit owner demands an arbitration by filing such
16 demand with the court not less than thirty and not more than ninety
17 days after filing or service of the complaint, whichever is later, the
18 parties shall participate in a private arbitration hearing. The
19 declarant, the association, and the unit owner do not have the right to
20 compel arbitration without giving timely notice in compliance with this
21 subsection. Unless otherwise agreed by the parties, the arbitration
22 hearing shall commence no more than fourteen months from the later of
23 the filing or service of the complaint.

24 (2) Unless otherwise agreed by the parties, claims that in
25 aggregate are for less than one million dollars shall be heard by a
26 single arbitrator and all other claims shall be heard by three
27 arbitrators. As used in this chapter, arbitrator also means
28 arbitrators where applicable.

29 (3) Unless otherwise agreed by the parties, the court shall appoint
30 the arbitrator, who shall be a current or former attorney with
31 experience as an attorney, judge, arbitrator, or mediator in
32 construction defect disputes involving the application of Washington
33 law.

34 (4) Upon conclusion of the arbitration hearing, the arbitrator
35 shall file the decision and award with the clerk of the superior court,
36 together with proof of service thereof on the parties. Within twenty
37 days after the filing of the decision and award, any aggrieved party

1 may file with the clerk a written notice of appeal and demand for a
2 trial de novo in the superior court on all claims between the appealing
3 party and an adverse party. As used in this section, "adverse party"
4 means the party who either directly asserted or defended claims against
5 the appealing party. The demand shall identify the adverse party or
6 parties and all claims between those parties shall be included in the
7 trial de novo. The right to a trial de novo includes the right to a
8 jury, if demanded. The court shall give priority to the trial date for
9 the trial de novo.

10 (5) If the judgment for damages, not including awards of fees and
11 costs, in the trial de novo is not more favorable to the appealing
12 party than the damages awarded by the arbitrator, not including awards
13 of fees and costs, the appealing party shall pay the nonappealing
14 adverse party's costs and fees incurred after the filing of the appeal,
15 including reasonable attorneys' fees so incurred.

16 (6) If the judgment for damages, not including awards of fees and
17 costs, in the trial de novo is more favorable to the appealing party
18 than the damages awarded by the arbitrator, not including awards of
19 fees and costs, then the court may award costs and fees, including
20 reasonable attorneys' fees, incurred after the filing of the request
21 for trial de novo in accordance with applicable law; provided if such
22 a judgment is not more favorable to the appealing party than the most
23 recent offer of judgment, if any, made pursuant to section 17 of this
24 act, the court shall not make an award of fees and costs to the
25 appealing party.

26 (7) If a party is entitled to an award with respect to the same
27 fees and costs pursuant to this section and section 17 of this act,
28 then the party shall only receive an award of fees and costs as
29 provided in and limited by section 17 of this act. Any award of fees
30 and costs pursuant to subsections (5) or (6) of this section is subject
31 to review in the event of any appeal thereof otherwise permitted by
32 applicable law or court rule.

33 NEW SECTION. **Sec. 12.** CASE SCHEDULE PLAN. (1) Not less than
34 sixty days after the later of filing or service of the complaint, the
35 parties shall confer to create a proposed case schedule plan for
36 submission to the court that includes the following deadlines:

37 (a) Selection of a mediator;

1 (b) Commencement of the mandatory mediation and submission of
2 mediation materials required by this chapter;

3 (c) Selection of the arbitrator by the parties, where applicable;

4 (d) Joinder of additional parties in the action;

5 (e) Completion of each party's investigation;

6 (f) Disclosure of each party's proposed repair plan;

7 (g) Disclosure of each party's estimated costs of repair;

8 (h) Meeting of parties and experts to confer in accordance with
9 section 13 of this act; and

10 (i) Disclosure of each party's settlement demand or response.

11 (2) If the parties agree upon a proposed case schedule plan, they
12 shall move the court for the entry of the proposed case schedule plan.
13 If the parties cannot agree, either party may move the court for entry
14 of a case schedule plan that includes the above deadlines.

15 NEW SECTION. **Sec. 13.** MANDATORY MEDIATION. (1) The parties to an
16 action subject to this act shall engage in mediation. Unless the
17 parties agree otherwise, the mediation required by this section shall
18 commence within seven months of the later of the filing or service of
19 the complaint. If the parties cannot agree upon a mediator, the court
20 shall appoint a mediator.

21 (2) Prior to the mediation required by this section, the parties
22 and their experts shall meet and confer in good faith to attempt to
23 resolve or narrow the scope of the disputed issues, including issues
24 related to the parties' repair plans.

25 (3) Prior to the mandatory mediation, the parties or their
26 attorneys shall file and serve a declaration that:

27 (a) A decision maker with authority to settle will be available for
28 the duration of the mandatory mediation; and

29 (b) The decision maker has been provided with and has reviewed the
30 mediation materials provided by the party to which the decision maker
31 is affiliated as well as the materials submitted by the opposing
32 parties.

33 (4) Completion of the mediation required by this section occurs
34 upon written notice of termination by any party. The provisions of
35 section 17 of this act shall not apply to any later mediation conducted
36 following such notice.

1 NEW SECTION. **Sec. 14.** NEUTRAL EXPERT. (1) If, after meeting and
2 conferring as required by section 13(2) of this act, disputed issues
3 remain, a party may file a motion with the court, or arbitrator if an
4 arbitrator has been appointed, requesting the appointment of a neutral
5 expert to address any or all of the disputed issues. Unless otherwise
6 agreed to by the parties or upon a showing of exceptional
7 circumstances, including a material adverse change in a party's
8 litigation risks due to a change in allegations, claims, or defenses by
9 an adverse party following the appointment of the neutral expert, any
10 such motion shall be filed no later than sixty days after the first day
11 of the meeting required by section 13(2) of this act. Upon such a
12 request, the court or arbitrator shall decide whether or not to appoint
13 a neutral expert or experts. A party may only request more than one
14 neutral expert if the particular expertise of the additional neutral
15 expert or experts is necessary to address disputed issues.

16 (2) The neutral expert shall be a licensed architect or engineer,
17 or any other person, with substantial experience relevant to the issue
18 or issues in dispute. The neutral expert shall not have been employed
19 as an expert by a party to the present action within three years before
20 the commencement of the present action, unless the parties agree
21 otherwise.

22 (3) All parties shall be given an opportunity to recommend neutral
23 experts to the court or arbitrator and shall have input regarding the
24 appointment of a neutral expert.

25 (4) Unless the parties agree otherwise on the following matters,
26 the court, or arbitrator if then appointed, shall determine:

27 (a) Who shall serve as the neutral expert;

28 (b) Subject to the requirements of this section, the scope of the
29 neutral expert's duties;

30 (c) The number and timing of inspections of the property;

31 (d) Coordination of inspection activities with the parties'
32 experts;

33 (e) The neutral expert's access to the work product of the parties'
34 experts;

35 (f) The product to be prepared by the neutral expert;

36 (g) Whether the neutral expert may participate personally in the
37 mediation required by section 13 of this act; and

38 (h) Other matters relevant to the neutral expert's assignment.

1 (5) Unless the parties agree otherwise, the neutral expert shall
2 not make findings or render opinions regarding the amount of damages to
3 be awarded, or the cost of repairs, or absent exceptional circumstances
4 any matters that are not in dispute as determined in the meeting
5 described in section 13(2) of this act or otherwise.

6 (6) A party may, by motion to the court, or to the arbitrator if
7 then appointed, object to the individual appointed to serve as the
8 neutral expert and to determinations regarding the neutral expert's
9 assignment.

10 (7) The neutral expert shall have no liability to the parties for
11 the performance of his or her duties as the neutral expert.

12 (8) Except as otherwise agreed by the parties, the parties have a
13 right to review and comment on the neutral expert's report before it is
14 made final.

15 (9) A neutral expert's report or testimony is not entitled to any
16 evidentiary presumption in any arbitration or court proceeding.
17 Nothing in this act restricts the admissibility of such a report or
18 testimony, provided it is within the scope of the neutral expert's
19 assigned duties, and questions of the admissibility of such a report or
20 testimony shall be determined under the rules of evidence.

21 (10) The court, or arbitrator if then appointed, shall determine
22 the significance of the neutral expert's report and testimony with
23 respect to parties joined after the neutral expert's appointment and
24 shall determine whether additional neutral experts should be appointed
25 or other measures should be taken to protect such joined parties from
26 undue prejudice.

27 NEW SECTION. **Sec. 15.** PAYMENT OF ARBITRATORS, MEDIATORS, AND
28 NEUTRAL EXPERTS. (1) Where the building permit that authorized
29 commencement of construction of a building was issued on or after the
30 effective date of this act:

31 (a)(i) If the action is referred to arbitration under section 11 of
32 this act, the party who demands arbitration shall advance the fees of
33 any arbitrator and any mediator appointed under section 13 of this act;
34 and

35 (ii) A party who requests the appointment of a neutral expert
36 pursuant to section 14 of this act shall advance any appointed neutral
37 expert's fees incurred up to the issuance of a final report.

1 (b) If the action has not been referred to arbitration, the court
2 shall determine liability for the fees of any mediator appointed under
3 section 13 of this act, unless the parties agree otherwise.

4 (c) Ultimate liability for any fees or costs advanced pursuant to
5 this subsection (1) is subject to the fee- and cost-shifting provisions
6 of section 17 of this act.

7 (2) Where the building permit that authorized commencement of
8 construction of a building was issued before the effective date of this
9 act:

10 (a)(i) If the action is referred to arbitration under section 11 of
11 this act, the party who demands arbitration is liable for and shall pay
12 the fees of any appointed arbitrator and any mediator appointed under
13 section 13 of this act; and

14 (ii) A party who requests the appointment of a neutral expert
15 pursuant to section 14 of this act is liable for and shall pay any
16 appointed neutral expert's fees incurred up to the issuance of a final
17 report.

18 (b) If the action has not been referred to arbitration, the court
19 shall determine liability for the fees of any mediator appointed under
20 section 13 of this act, unless the parties agree otherwise.

21 (c) Fees and costs paid under this subsection (2) are not subject
22 to the fee- and cost-shifting provisions of section 17 of this act.

23 NEW SECTION. **Sec. 16.** SUBCONTRACTORS. Upon the demand of a party
24 to an arbitration demanded under section 11 of this act, any
25 subcontractor or supplier against whom such party has a legal claim and
26 whose work or performance on the building in question becomes an issue
27 in the arbitration may be joined in and become a party to the
28 arbitration. However, joinder of such parties shall not be allowed if
29 such joinder would require the arbitration hearing date to be continued
30 beyond the date established pursuant to section 11 of this act, unless
31 the existing parties to the arbitration agree otherwise. Nothing in
32 sections 2 through 10 of this act shall be construed to release,
33 modify, or otherwise alleviate the liabilities or responsibilities that
34 any party may have towards any other party, contractor, or
35 subcontractor.

1 NEW SECTION. **Sec. 17.** OFFERS OF JUDGMENT--COSTS AND FEES. (1)

2 For purposes of this section, "unit owner" means a unit owner who is a
3 party to the litigation, and does not include any unit owners whose
4 involvement with the litigation stems solely from their membership in
5 the association. If the association is a party to the litigation, then
6 for purposes of this section, as between the association and the unit
7 owner or unit owners, the association shall have sole responsibility
8 for decisions and actions with respect to making and accepting all
9 offers of judgment and determining the adequacy of a declarant's offer
10 of judgment with respect to common elements and such decisions made and
11 actions taken by the association shall be binding on the association
12 and unit owners.

13 (2) On or before the sixtieth day following completion of the
14 mediation pursuant to section 13(4) of this act, the declarant or
15 association, or a unit owner may serve on an adverse party an offer to
16 allow judgment to be entered. The offer of judgment shall specify the
17 amount of damages, not including costs or fees, that the declarant,
18 association, or unit owner is offering to pay or receive. A
19 declarant's offer shall also include its commitment to pay costs and
20 fees that may be awarded as provided in this section. The declarant,
21 association, and unit owner may make more than one offer of judgment so
22 long as each offer is timely made. Each subsequent offer supersedes
23 and replaces the previous offer. Any offer not accepted within twenty-
24 one days of the service of that offer is deemed rejected and withdrawn
25 and evidence thereof is not admissible and may not be provided to the
26 court or arbitrator except in a proceeding to determine costs and fees
27 or as part of the motion identified in subsection (3) of this section.

28 (3) A declarant's offer must include a demonstration of ability to
29 pay damages, costs, and fees, including reasonable attorneys' fees,
30 within thirty days of acceptance of the offer of judgment. The
31 demonstration of ability to pay shall include a sworn statement signed
32 by the declarant, the attorney representing the declarant, and, if any
33 insurance proceeds will be used to fund any portion of the offer, an
34 authorized representative of the insurance company. If the association
35 or unit owner disputes the adequacy of the declarant's demonstration of
36 ability to pay, the association or unit owner may file a motion with
37 the court requesting a ruling on the adequacy of the declarant's

1 demonstration of ability to pay. Upon filing of such motion, the
2 deadline for a response to the offer shall be tolled from the date the
3 motion is filed until the court has ruled.

4 (4) An association or unit owner that accepts the declarant's offer
5 of judgment shall be deemed the prevailing party and, in addition to
6 recovery of the amount of the offer, shall be entitled to a costs and
7 fees award, including reasonable attorneys' fees, in an amount to be
8 determined by the court in accordance with applicable law.

9 (5) If the amount of the final nonappealable or nonappealed
10 judgment, exclusive of costs or fees, is not more favorable to the
11 offeree than the offer of judgment, then the offeror is deemed the
12 prevailing party for purposes of this section only and is entitled to
13 an award of costs and fees, including reasonable attorneys' fees,
14 incurred after the date the last offer of judgment was rejected and
15 through the date of entry of a final nonappealable or nonappealed
16 judgment, in an amount to be determined by the court in accordance with
17 applicable law. The nonprevailing party shall not be entitled to
18 receive any award of costs and fees.

19 (6) If the final nonappealable or nonappealed judgment on damages,
20 not including costs or fees, is more favorable to the offeree than the
21 last offer of judgment, then the court shall determine which party is
22 the prevailing party and shall determine the amount of the costs and
23 fees award, including reasonable attorneys' fees, in accordance with
24 applicable law.

25 (7) Notwithstanding any other provision in this section, with
26 respect to claims brought by an association or unit holder, the
27 liability for declarant's costs and fees, including reasonable
28 attorneys' fees, shall:

29 (a) With respect to claims brought by an association, not exceed
30 five percent of the assessed value of the condominium as a whole, which
31 is determined by the aggregate tax-assessed value of all units at the
32 time of the award; and

33 (b) With respect to claims brought by a unit owner, not exceed five
34 percent of the assessed value of the unit at the time of the award.

35 **Sec. 18.** RCW 64.34.415 and 1992 c 220 s 22 are each amended to
36 read as follows:

1 (1) The public offering statement of a conversion condominium shall
2 contain, in addition to the information required by RCW 64.34.410:

3 (a) Either a copy of a report prepared by an independent, licensed
4 architect or engineer, or a statement by the declarant based on such
5 report, which report or statement describes, to the extent reasonably
6 ascertainable, the present condition of the building enclosure and of
7 all structural components and mechanical and electrical installations
8 material to the use and enjoyment of the condominium except that the
9 portion of the report pertaining to the building enclosure may be
10 prepared by a qualified building inspector who satisfies the
11 requirements of section 5 of this act;

12 (b) A statement by the declarant of the expected useful life of
13 each item reported on in (a) of this subsection or a statement that no
14 representations are made in that regard; and

15 (c) A list of any outstanding notices of uncured violations of
16 building code or other municipal regulations, together with the
17 estimated cost of curing those violations. Unless the purchaser waives
18 in writing the curing of specific violations, the extent to which the
19 declarant will cure such violations prior to the closing of the sale of
20 a unit in the condominium shall be included.

21 (2) With respect to a conversion condominium to which section 10 of
22 this act applies, the declarant shall perform building enclosure
23 repairs if required to do so by section 10(1)(b)(iv) of this act.

24 (3) This section applies only to condominiums containing units that
25 may be occupied for residential use.

26 **Sec. 19.** RCW 64.34.410 and 2004 c 201 s 11 are each amended to
27 read as follows:

28 (1) A public offering statement shall contain the following
29 information:

30 (a) The name and address of the condominium;

31 (b) The name and address of the declarant;

32 (c) The name and address of the management company, if any;

33 (d) The relationship of the management company to the declarant, if
34 any;

35 (e) A list of up to the five most recent condominium projects
36 completed by the declarant or an affiliate of the declarant within the
37 past five years, including the names of the condominiums, their

1 addresses, and the number of existing units in each. For the purpose
2 of this section, a condominium is "completed" when any one unit therein
3 has been rented or sold;

4 (f) The nature of the interest being offered for sale;

5 (g) A brief description of the permitted uses and use restrictions
6 pertaining to the units and the common elements;

7 (h) A brief description of the restrictions, if any, on the renting
8 or leasing of units by the declarant or other unit owners, together
9 with the rights, if any, of the declarant to rent or lease at least a
10 majority of units;

11 (i) The number of existing units in the condominium and the maximum
12 number of units that may be added to the condominium;

13 (j) A list of the principal common amenities in the condominium
14 which materially affect the value of the condominium and those that
15 will or may be added to the condominium;

16 (k) A list of the limited common elements assigned to the units
17 being offered for sale;

18 (l) The identification of any real property not in the condominium,
19 the owner of which has access to any of the common elements, and a
20 description of the terms of such access;

21 (m) The identification of any real property not in the condominium
22 to which unit owners have access and a description of the terms of such
23 access;

24 (n) The status of construction of the units and common elements,
25 including estimated dates of completion if not completed;

26 (o) The estimated current common expense liability for the units
27 being offered;

28 (p) An estimate of any payment with respect to the common expense
29 liability for the units being offered which will be due at closing;

30 (q) The estimated current amount and purpose of any fees not
31 included in the common expenses and charged by the declarant or the
32 association for the use of any of the common elements;

33 (r) Any assessments which have been agreed to or are known to the
34 declarant and which, if not paid, may constitute a lien against any
35 units or common elements in favor of any governmental agency;

36 (s) The identification of any parts of the condominium, other than
37 the units, which any individual owner will have the responsibility for
38 maintaining;

- 1 (t) If the condominium involves a conversion condominium, the
2 information required by RCW 64.34.415;
- 3 (u) Whether timesharing is restricted or prohibited, and if
4 restricted, a general description of such restrictions;
- 5 (v) A list of all development rights reserved to the declarant and
6 all special declarant rights reserved to the declarant, together with
7 the dates such rights must terminate, and a copy of or reference by
8 recording number to any recorded transfer of a special declarant right;
- 9 (w) A description of any material differences in terms of
10 furnishings, fixtures, finishes, and equipment between any model unit
11 available to the purchaser at the time the agreement for sale is
12 executed and the unit being offered;
- 13 (x) Any liens on real property to be conveyed to the association
14 required to be disclosed pursuant to RCW 64.34.435(2)(b);
- 15 (y) A list of any physical hazards known to the declarant which
16 particularly affect the condominium or the immediate vicinity in which
17 the condominium is located and which are not readily ascertainable by
18 the purchaser;
- 19 (z) A brief description of any construction warranties to be
20 provided to the purchaser;
- 21 (aa) Any building code violation citations received by the
22 declarant in connection with the condominium which have not been
23 corrected;
- 24 (bb) A statement of any unsatisfied judgments or pending suits
25 against the association, a statement of the status of any pending suits
26 material to the condominium of which the declarant has actual
27 knowledge, and a statement of any litigation brought by an owners'
28 association, unit owner, or governmental entity in which the declarant
29 or any affiliate of the declarant has been a defendant, arising out of
30 the construction, sale, or administration of any condominium within the
31 previous five years, together with the results thereof, if known;
- 32 (cc) Any rights of first refusal to lease or purchase any unit or
33 any of the common elements;
- 34 (dd) The extent to which the insurance provided by the association
35 covers furnishings, fixtures, and equipment located in the unit;
- 36 (ee) A notice which describes a purchaser's right to cancel the
37 purchase agreement or extend the closing under RCW 64.34.420, including
38 applicable time frames and procedures;

1 (ff) Any reports or statements required by RCW 64.34.415 or
2 64.34.440(6)(a). RCW 64.34.415 shall apply to the public offering
3 statement of a condominium in connection with which a final certificate
4 of occupancy was issued more than sixty calendar months prior to the
5 preparation of the public offering statement whether or not the
6 condominium is a conversion condominium as defined in RCW
7 64.34.020(10);

8 (gg) A list of the documents which the prospective purchaser is
9 entitled to receive from the declarant before the rescission period
10 commences;

11 (hh) A notice which states: A purchaser may not rely on any
12 representation or express warranty unless it is contained in the public
13 offering statement or made in writing signed by the declarant or by any
14 person identified in the public offering statement as the declarant's
15 agent;

16 (ii) A notice which states: This public offering statement is only
17 a summary of some of the significant aspects of purchasing a unit in
18 this condominium and the condominium documents are complex, contain
19 other important information, and create binding legal obligations. You
20 should consider seeking the assistance of legal counsel;

21 (jj) Any other information and cross-references which the declarant
22 believes will be helpful in describing the condominium to the
23 recipients of the public offering statement, all of which may be
24 included or not included at the option of the declarant;

25 (kk) A notice that addresses compliance or noncompliance with the
26 housing for older persons act of 1995, P.L. 104-76, as enacted on
27 December 28, 1995;

28 (ll) A notice that is substantially in the form required by RCW
29 64.50.050; (~~and~~)

30 (mm) A statement, as required by RCW 64.35.210, as to whether the
31 units or common elements of the condominium are covered by a qualified
32 warranty, and a history of claims under any such warranty; and

33 (nn) A statement that the building enclosure has been designed and
34 inspected as required by sections 2 through 10 of this act, and, if
35 required, repaired in accordance with the requirements of section 10 of
36 this act.

37 (2) The public offering statement shall include copies of each of
38 the following documents: The declaration, the survey map and plans,

1 the articles of incorporation of the association, bylaws of the
2 association, rules and regulations, if any, current or proposed budget
3 for the association, (~~and~~) the balance sheet of the association
4 current within ninety days if assessments have been collected for
5 ninety days or more, and the inspection and repair report or reports
6 prepared in accordance with the requirements of section 10 of this act.

7 If any of the foregoing documents listed in this subsection are not
8 available because they have not been executed, adopted, or recorded,
9 drafts of such documents shall be provided with the public offering
10 statement, and, before closing the sale of a unit, the purchaser shall
11 be given copies of any material changes between the draft of the
12 proposed documents and the final documents.

13 (3) The disclosures required by subsection (1)(g), (k), (s), (u),
14 (v), and (cc) of this section shall also contain a reference to
15 specific sections in the condominium documents which further explain
16 the information disclosed.

17 (4) The disclosures required by subsection (1)(ee), (hh), (ii), and
18 (ll) of this section shall be located at the top of the first page of
19 the public offering statement and be typed or printed in ten-point bold
20 face type size.

21 (5) A declarant shall promptly amend the public offering statement
22 to reflect any material change in the information required by this
23 section.

24 **Sec. 20.** RCW 64.34.100 and 2004 c 201 s 2 are each amended to read
25 as follows:

26 (1) The remedies provided by this chapter shall be liberally
27 administered to the end that the aggrieved party is put in as good a
28 position as if the other party had fully performed. However,
29 consequential, special, or punitive damages may not be awarded except
30 as specifically provided in this chapter or by other rule of law.

31 (2) Except as otherwise provided in sections 11 through 17 of this
32 act or chapter 64.35 RCW, any right or obligation declared by this
33 chapter is enforceable by judicial proceeding. The arbitration
34 proceedings provided for in sections 11 through 17 of this act shall be
35 considered judicial proceedings for the purposes of this chapter.

1 NEW SECTION. **Sec. 21.** A new section is added to Article 1 of
2 chapter 64.34 RCW to read as follows:

3 Chapter 64.-- RCW (sections 1 through 17 of this act) includes
4 requirements for the inspection of the building envelopes of multiunit
5 residential buildings and for the resolution of disputes regarding
6 defects therein.

7 NEW SECTION. **Sec. 22.** CAPTIONS. Captions used in this act are
8 not any part of the law.

9 NEW SECTION. **Sec. 23.** Sections 1 through 17 of this act
10 constitute a new chapter in Title 64 RCW.

11 NEW SECTION. **Sec. 24.** EFFECTIVE DATE. This act takes effect
12 August 1, 2005."

13 Correct the title.

EFFECT: The striking amendment substantially rewrites the bill.
Most of the changes are of a structural or technical nature, or
represent an elaboration or clarification of a provision already in the
bill. The more substantive changes include the following:

1. All condominium conversions are made subject to building
envelope inspections for water penetration problems, regardless of
whether the building had been made subject to a nonconversion covenant.
The conversion inspection must include testing such as the removal of
siding to determine the manner in which the building was constructed.
The inspection must also include an evaluation of water penetration
issues, and the inspection report must also recommend any needed
repairs. The inspection must be disclosed in the condo public offering
statement. In addition, in the case of a building that is converted to
a condo before the expiration of a 5-year covenant not to convert, any
recommended repairs must be performed before the units may be sold as
condos. (The original bill exempts a noncondo multiunit residential
building from the inspection requirements completely if the building is
not converted until after a 10-year covenant against conversion.)

2. Builders and developers who are not required to comply with the
course of construction requirements of the bill are given the option of
electing to do so. This option applies to residential condominiums
without attached units, to buildings which have attached units on
separately platted lots, and to any buildings with two attached
dwelling units (the inspections remain mandatory for multiunit
residential buildings of three or more units).

Other changes made by the striking amendment include:

1. Providing a section that expressly sets out the applicability provisions of the bill with respect to when building permits are issued and when legal actions are filed;

2. Clarifying definitions of terms such as "multiunit residential building" and "building enclosure," and providing a definition for a "sale prohibition covenant" that includes a statutory form of the covenant;

3. Providing that additional testing of window assemblies is not required if the same assemblies have already been tested on the same project site within two years;

4. Requiring the parties to a dispute to attempt to agree on a case schedule plan that includes specific deadlines for various events in alternative dispute resolution or trial; and

5. Clarifying the interaction among the prevailing party cost and fees provisions of the bill with respect to arbitration, trial de novo, and offer of judgment.

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